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MENDOCINO COUNTY  
RUSSIAN RIVER FLOOD CONTROL &  
WATER CONSERVATION IMPROVEMENT DISTRICT

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TO:	John O'Hagan	FROM:	Barbara Spazek
COMPANY:	Division of Water Rights - SWRCB	DATE:	10/24/2002
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NOTES/COMMENTS:

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Article Last Updated:  
Wednesday, October 23, 2002 - 10:51:49 AM MST

**Masonite water right dries up  
during summer, Akerstrom says**  
By GLENDA ANDERSON/The Daily Journal

The water right Mendocino County is trying to buy from Masonite for an estimated \$3 million dries up most summers, according to former Russian River Flood Control and Water Conservation Improvement District engineer Gary Akerstrom.

"If you have a situation, like it is right now, where the only water you have in the river is water being released from the dam, you would not have any water" under Masonite's right, he said.

Masonite has more than one right. The county is trying to purchase the larger one, a post-1949 appropriative right to pump around 4,200 acre feet of Russian River underflow year round. It also wants to buy the strip of ground that includes the wells in which the water is collected.

The right may be called year-round, but it's only available when the Russian River has "natural" flows, Akerstrom said. Those are flows that would be available if Coyote Dam which holds Lake Mendocino didn't exist. Unfortunately, the Russian River would dry up in the summer if it weren't for the dam and the water stored behind it.

He compared the situation to hunting.

"Just because you've got a deer license doesn't mean you have a deer to shoot," Akerstrom said.

Because the natural flows disappear in the summer, the only water generally available for local use is the 8,000 acre-foot 1949 right to "project" water held by the Russian River district on behalf of residents in the district, which runs roughly from Redwood Valley to Hopland. Sonoma County owns the rights to the rest of the project water.

Akerstrom noted that the Russian River district historically has reported Masonite's summer and early fall water use under its license because its post-1949 right dries up.

Not only is Masonite's right inferior to the Russian River district's, it's also inferior to an estimated 8,100 acre feet of pre-1949 water rights, he said.

County officials said Tuesday that's not their impression of Masonite's water right.

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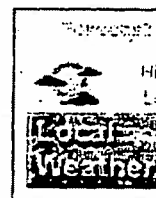
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"I'm simply reading the license. It says year-round ~~dis~~ensions from the underflow of the Russian River," said Mendocino County Water Agency Interim Director Jim Stretch.

He said he also does not believe the district's water right is superior to Masonite's. However Stretch, who admits he's new to water issues, said he would look into the contentions.

Even though Masonite's water right may be more seasonal than county officials think, Akerstrom said it's still worth having.

He noted the Russian River district has been encouraging its members which include the city of Ukiah and most of the small water-purveying districts in the valley to apply for, use and report their own winter and spring water rights. That way, the Russian River district could save its water right for the dry months, Akerstrom said.

The problem with that scenario, Stretch said, is the county would have to buy water from the district.

First District Supervisor Mike Delbar said he was told the Masonite water right was equal to the district's right.

But, in any case, he said purchasing that right is not the answer to the county's water problems.

The long-term answer is raising Coyote Dam so more water can be stored for dry times.

Akerstrom agrees. He noted there is plenty of water available in Mendocino County in the winter months.

"We don't have a water shortage problem; we have a storage problem," he said.

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Article Last Updated:  
Thursday, October 24, 2002 - 10:07:44 AM MST

## Masonite didn't use water right, so did it lose it?

By GLENDA ANDERSON/The Daily Journal

The amount of Masonite water the county pays for and the amount it gets may be two different things.

The county is negotiating to buy around 4,200 acre feet of water from Masonite for an estimated \$3 million.

However, the company historically has used only a fraction between 92 acre feet and 707 acre feet of that water in the last 27 years, according to state Water Resources Control Board and Russian River Flood Control and Water Conservation Improvement District records.

Under water-rights laws, a right can be lost when it's determined that the water has not been put to beneficial use for five years or more.

"If you don't use it, you lose it," the water adage goes.

Masonite has filed reports with the state claiming to have used recycled water or conserved water in amounts that bring its water use closer in line with its right, but the state has never determined whether those claims legitimately can be applied to the beneficial use requirement, according to State Water Resources Control Board, Division of Water Rights Senior Water Resources Control Engineer John O'Hagan.

In addition, the conservation and recycled water figures look a little fishy they're each more than double the amount of water Masonite reported pumping under the water right, local water officials noted.

O'Hagan said the county should make sure it's really getting 4,200 acre feet of water before it seals the deal with Masonite.

"I wouldn't want to buy that amount and be told later it's not that amount," O'Hagan said.

Finding out, however, is not that simple, and the issue might not come to a head until the county applies for changes in the water permit after the purchase, which is expected to be completed in December. The county would need to change the point of use and type of use from industrial to domestic among other things.

That's one of the times the public gets some say, O'Hagan said. Someone, or a group, could claim that the water had not been used, so the right was lost.

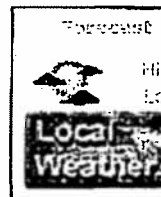
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Normally, the water resource agency doesn't make determination until someone files such a protest, he said.

In addition, those objecting to the transfer or use of that water could require that the county conduct a full environmental impact report, claiming that, since that water was never before taken from the Russian River underflow, it could cause serious environmental impacts to start doing so now.

Protesters also could require an impact report by claiming that switching the water's use from industrial to residential would have growth-inducing impacts.

O'Hagan said it might be possible for the county to find out how much water is truly available if Masonite applies for some of the changes in the water right permit before the purchase is sealed, but he could not say for sure. It also might be able to request that the board make a ruling on at least Masonite's actual water usage.

The public will have a chance to voice concerns or applaud the county's efforts to secure a water right before that point. The county plans to hold hearings sometime between now and Dec. 17, when the Board of Supervisors is scheduled to vote on the sale. Escrow is expected to close Dec. 31 if the sale goes forward and all goes well.

The hearings will involve the county's declaration that the sale would have no negative environmental impacts, something the board apparently approved doing in closed session.

The board's other closed sessions on the issue, which supervisors kept mum about other than a cryptic sentence on their board agenda, has been criticized by local water officials. They noted supervisors would be better informed about water rights had they had open discussions with people who have years of experience with Russian River water rights, such as other water agency officials and attorneys. Instead, the board has largely relied on information provided by its new interim water director, who has no prior water experience.

It was apparent from discussions with supervisors and the water agency director that they were unaware Masonite's water right is not superior to the Russian River district's 8,000 acre feet and that they can't necessarily pump water all year, even though the right is considered year round. In dry summers there may not be water available to pump, local water officials have said.

County officials also appeared to believe that because Masonite Corp. licensed its water use in the late 1950s, it has priority over entities that have not. Holding a license has not proved to make such guarantees.

There has been speculation in the community that the amount of water Masonite has failed to use will be up for grabs and that the county could simply apply for the right, rather than buy it from Masonite.

If the unused water does go public, however, it would likely be made available first to one of the more than 180 people waiting in line for a water right, local water officials said.